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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-299

PREMIER INDUSTRIAL CORPORATION, a corporation,
Petitioner

v.

ROY A. MARLOW and C & C PRODUCTS, INC.,
a corporation, *Respondents*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

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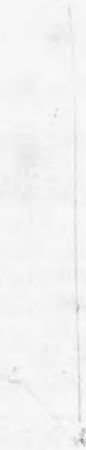
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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

OPINION BELOW

Petitioner respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of Alabama entered in the case of *Premier Industrial Corporation* v. *Roy A. Marlow, et al,* — Ala. —, 295 So.2d 396 (1974), entered on May 9 1974, rehearing denied June 20, 1974.

JURISDICTION

The judgment of the Supreme Court of Alabama was entered on June 20, 1974. The jurisdiction of this Court is invoked under 28 USC Section 1257(3).

QUESTIONS PRESENTED

1. Does the United States Constitution deny Alabama the power to close the courts of that state to an action by a foreign corporation engaged solely in interstate commerce activity within Alabama to enforce contracts made in another state on the grounds that the foreign corporation has not qualified to do business in Alabama?

2. Does the United States Constitution deny Alabama the power to refuse to enforce a contract declared valid under the law of the state in which it was made by a United States District Court of competent jurisdiction because said contract violates a statute of Alabama?

STATUTORY PROVISIONS INVOLVED

Statutory provisions involved, Title 10, Section 21 (89) and Title 9 Section 22, *Code of Alabama*, 1940, Recompiled 1958; Title 79, Section 3-247, *Mississippi Code*, 1972. These provisions are set out in Appendix C.

STATEMENT OF THE CASE

Petitioner is an Ohio corporation engaged in marketing industrial products through the United States. The products are marketed through "independent sales agents" working under supervisors responsible for several states of the United States. An extensive training program is maintained by petitioner as to the

exact manner in which these "independent sales agents" are to sell the petitioner's products and to handle relations with petitioner's customers.

The respondent, C & C Products, Inc., also an Ohio corporation, was formed by two former employees and officers of petitioner. C & C is engaged in the same business as petitioner.

The respondent Roy A. Marlow, was employed by petitioner as supervisor of its sales agents in several Southern states until he left petitioner to enter the employ of C & C in the same capacity.

Petitioner filed suit against C & C and Marlow in the Circuit of Jefferson County, Alabama on June 1, 1972. The bill of complaint alleged Marlow entered into a conspiracy with C & C to use his position with petitioner to solicit petitioner's sales agents to leave the employ of petitioner and to enter the employ of C & C. The bill further alleged that pursuant to this conspiracy, Marlow, while representing to petitioner he was acting as its supervisor, traveled through the territory assigned to him by petitioner at the expense of petitioner for the purpose of soliciting the sales agents of petitioner to leave the employ of petitioner and enter into the employ of C & C. The bill further alleged that each of petitioner's sales agents had signed a non-competition agreement with petitioner, that this fact was known to respondents, that respondents sought to procure violations of these agreements and promised free legal services to the defecting agents if petitioner sought to enforce these agreements. Each of these agreements stated they were executed in Ohio and were to be interpreted under Ohio law. The bill alleged that respondents were successful in procuring the services of four of petitioner's agents for C & C.

The bill sought damages, both actual and punitive. It also sought the following injunctive relief:

(a) Soliciting, attempting to solicit, or inducing, procuring, attempting to induce or attempting to procure further breaches of contract between complainant and any of its sales agents and/or management personnel.

(b) From continuing to employ or attempting to employ former sales agents or management personnel of complainant in violation of their contracts with complainant, specifically: S. Forest Barker, *George Max Sides,* Robert C. McMillan and Verdery A. Clark.

(c) From accepting any sales or orders obtained by, submitted by or from the territory assigned by C & C to any of the former sales agents or management personnel of complainant in violation of their contract with complainant, specifically: S. Forest Barker, *George Max Sides,* Robert C. McMillan and Verdery A. Clark.

The injunctive relief was granted ex parte by the Circuit Court on June 1, 1972. Respondents filed pleadings, including motions to discharge and dissolve the injunction. The Circuit Court overruled the motions. Respondents appealed.

The Supreme Court of Alabama reversed and remanded in the case of *C & C Products, Inc., et al* v. *Premier Industrial Corporation,* 290 Ala. 179, 275 So.2d 124. The Alabama Court held that the action sounded in contract, that petitioner was not qualified with the Secretary of State of Alabama to do business in Alabama as required by statute and that under Title 10, Section 21(89), *Code of Alabama,* 1940, set out be-

low, petitioner could not enforce rights arising from the contracts in the Alabama courts:

> "Foreign corporations not qualified to do business in state; effect on certain contracts or agreements; service on. All contracts or agreements made or entered into *in this state* by foreign corporations which have not qualified to do business in this state shall be held void at the suit of such foreign corporation or any person claiming through or under such foreign corporation by virtue of said void contract or agreement but nothing herein shall abrogate the equitable rule that he who seeks equity must do equity; . . . ." *Code of Alabama,* 1940, Recompiled 1958 [Emphasis Supplied]

The Court recognized that the contracts between petitioner and the sales agents concerned were entered into in Ohio and were to be interpreted by Ohio law.

The Circuit Court thereafter dissolved the injunction. The petitioner amended the bill of complaint. The amended bill of complaint is Appendix A hereto. Among the allegations added to the bill of complaint were the following describing the petitioner's method of doing business in Alabama:

> "7. Complainant reserves the right to refuse or accept all orders obtained by the independent sales agents and is not bound to accept any orders obtained by any independent sales agent. Orders are not shipped to the independent sales agents but are shipped directly to the customer. The independent sales agents are prohibited from using the trade name of complainant except in connection with the sale of products shipped by the complainant to the customer purchasing such products. Further, the independent sales agents have no authority to assume or create

any obligation whatever, express or implied, in behalf of or in the name of the complainant or to bind the complainant in any manner whatsoever. All of the expenses for the operation of the independent sales agent's office and activities are borne by the independent sales agents and they are solely responsible for the payment thereof. No products of the complainant are stored in Alabama but are shipped into the state in response to order approved by the complainant.

8. The independent sales agents are not paid on a sales basis but on commissions only and based solely on the merchandise which he sells. The independent sales agents are responsible for all travel and other expenses, conduct of the business and complainant has no responsibility for these terms. Complainant does not require or allow independent sales agents to make collections for the company and the independent sales agents are prohibited from endorsing any commercial paper belonging to complainant or to carry any bank accounts in any kind of nature in complainant's name. Complainant does not require the independent sales agents to provide any services to the customers and no written reports are required other than a record of calls and sales."

During the course of the first appeal, petitioner obtained a judgment in the United States District Court for the Southern District of Mississippi against one of the defecting agents concerned in the instant action, George M. Sides. The District Court enforced petitioner's contract with Sides in the unpublished opinion set out in Appendix B.

This case involved one of the same sales agents of petitioner as the instant case, the same business op-

erations of the petitioner as the instant case and the same contract as the instant case. Further, petitioner was not qualified to do business in Mississippi, and Mississippi has the same punitive statute as Alabama closing the courts of Mississippi in contract actions to non-qualified foreign corporations doing business in the state. The Mississippi and Alabama statutes are set out side by side in Appendix C. The District Court found petitioner to be engaged solely in interstate commerce, held petitioner's contract with the defecting agent valid and issued an injunction against the defecting agent violating the contract. The amended complaint alleged the decision of the District Court and the enforcement by that Court of the contract of petitioner.

Respondents filed demurrers and a motion to dismiss to the amended complaint. The Circuit Court dismissed the action and petitioner appealed to the Alabama Supreme Court.

The Supreme Court of Alabama affirmed the action of the Circuit Court dismissing petitioner's action in the case of *Premier Industrial Corporation* v. *Marlow*, — Ala. —, 295 So.2d 396 (1974). The Court held as follows on the question of interstate commerce:

> "But paragraphs 5 and 6 of the original and the amended bill show that Premier's business in each of the United States includes "selecting, developing and marketing its products, advertising and promoting its name and various brand names and trademarks which it uses, in training and supervising its sales representatives and management personnel and providing unique assistance to its customers by supplying them with quality parts and supplied, developing sources of supply for customer needs and educating such customers in

efficient methods of storage and inventory control * * *' and marketing 'its products through independent sales agents who are assigned to specific marketing territories and who are carefully and exactingly selected, trained and equipped to provide quality sales and service * * *.'

[3] This court, on first appeal, determined from these allegations, that Premier was engaged in intrastate business in Alabama and we see no reason to alter that position on this appeal. That being so, it follows that we reach the same conclusion as we did on first appeal.' 295 So.2d at 398

The Supreme Court of Alabama further held that the contracts between petitioner and its agents, including George M. Sides, were void as they were in violation of Title 9, Section 22, *Code of Alabama,* 1940, Recompiled 1958, as unlawful restraints of trade. The pertinent Alabama code section is set out in Appendix C.

The Alabama Supreme Court was urged in briefs and argument that such a holding would be and was a violation of the full faith and credit clause of the United States Constitution in view of the opinion of the Mississippi District Court upholding such contracts under the law of Ohio.

A petition for rehearing was denied by the Supreme Court of Alabama on June 20, 1974. Thus, this petition for certiorari.

REASONS FOR GRANTING THE WRIT

The first question presented is whether or not petitioner is engaged solely in interstate commerce in its business operations in Alabama. If so, the State of Alabama does not have the right to close its courts to petitioner in an action in which petitioner attempts

to enforce contracts made in another state in connection with the conduct of petitioner's business in interstate commerce.

No evidence has been taken in this matter. The pleadings alone govern the consideration of all questions.

The decision of the Alabama Supreme Court is erroneous if the allegations of the amended bill show petitioner was not in fact subject to the qualification to do business requirements of the constitution and statutes of Alabama. The allegations of the amended bill establish petitioner was engaged solely in interstate commerce activities within the State of Alabama at all times relevant to this action.

The allegations of the amended bill are identical to the findings in a decision of the United States District Court for the Southern District of Mississippi, *Premier Industrial Corporation* v. *George M. Sides,* CA No. 72J-99, December 22, 1972. (As this opinion is unreported, a copy is attached to this petition as Appendix B). This opinion enforces the contract of one of the defecting agents involved in the instant case. In fact, it was an action by petitioner to enforce the provisions of the very contract the Supreme Court of Alabama held void.

The District Court held the business operations of petitioner as found by that Court constituted the doing of business solely in interstate commerce and consequently held that petitioner was exempt from the operation of the Mississippi statute denying access to the Mississippi courts in contract actions to foreign corporations doing business in Mississippi without first qualifying with the state as required by statute, though this defense was asserted by Sides. (The Mississippi

and Alabama statutes are set out side by side for easy comparison in Appendix C.)

The allegations of the amended bill of complaint bring it squarely within that decision. The pertinent portions of the amended bill are set out on the right below and the pertinent portions of the Mississippi opinion are set out on the left so the Court may readily observe the allegations of the amended bill as to the conduct of Premier's business are squarely within the opinion of the Mississippi court.

Mississippi Opinion	*Amended Bill of Complaint*
"The first question presented to the court is as to whether or not the plaintiff as an Ohio corporation has any right to institute and maintain this suit in this court. It never qualified to do business in Mississippi at any time as required by the laws of Mississippi. Premier never had an office in Mississippi. It never had a telephone in Mississippi. It conducted its business in interstate commerce through the sale of its merchandise and orders taken in Mississippi and transmitted to and accepted in Atlanta, Georgia. Premier authorized its salesman to furnish its customers bins for the accommodations of its bolts and nuts, etc. On some occasions the sales-	"1. Premier is incorporated under the laws of the State of Ohio. Premier is a diversified company in interstate commerce doing business in each of the United States. 6. Complainant markets its products through independent sales agents who are assigned to specific marketing territories and who are carefully and exactingly selected, trained and equipped to provide quality sales and service which is recognized among all of the customers for the parts and supplies developed and marketed by complainant. Most of the direct contact with customers is made by such sales agents, and valuable good will is gen-

Mississippi Opinion

man would be in Atlanta, and would pick up an order and bring it to the customer in Mississippi. That has happened many times for the accommodation of the customer. The salesman was required as a part of his duty to collect delinquent accounts in Mississippi on his sales and if they were not collected, his commission was charged back to him. On occasions, the salesman had been required to collect accounts in Mississippi which he did not sell. The salesman has sold articles in interstate commerce on order to public agencies such as counties and schools which the salesman has been required to qualify by procuring a special license to make such sales and to recover therefor. These sales in my opinion did not constitute doing business in Mississippi. This Mississippi statute denying access to its courts is highly penal and must be strictly construed. The court heard testimony on the question as to whether or not plaintiff was doing business in Mississippi

Amended Bill of Complaint

erated by such agents on behalf of and in the benefit of complainant and its products.

7. Complainant reserves the right to refuse or accept all orders obtained by the independent sales agents and is not bound to accept any order obtained by any independent sales agents but are shipped directly to the customer. The independent sales agents are prohibited from using the trade name of complainant except in connection with the sale of products shipped by the complainant to the customer purchasing such products. Further, the independent sales agents have no authority to assume or create any obligation whatever, express or implied, in behalf of or in the name of the complainant or to bind the complainant in any manner whatsover. All of the expenses for the operation of the independent sales agent's office and activities are borne by the independent sales agents and they are solely responsible for the pay-

Mississippi Opinion

without having qualified to do so and under penalty of statute. The court is of the opinion and finds that Premier has not done business in Mississippi in contravention of the statute, but has in such respect and under the circumstances in this case engaged only in interstate commerce. Those incidental and isolated instances where its salesmen have accommodated the customers in Mississippi cannot properly be treated and regarded as doing business. This plaintiff had the right to establish its policy as to engaging in business through the channels of interstate commerce, and nothing has been shown the court to change that policy, or to entitle anyone to invoke this highly penal statute under the contention that the plaintiff was engaged in intrastate commerce." (Appendix B)

Amended Bill of Complaint

ment thereof. No products of the complainant are stored in Alabama but are shipped into the state in response to orders approved by the complainant.

8. The independent sales agents are not paid on a sales basis but on commissions only and based solely on the merchandise which he sells. The independent sales agents are responsible for all travel and other expenses, conduct of the business and complainant has no responsibility for these items. Complainant does not require or allow independent sales agents to make collections for the company and the independent sales agents are prohibited from endorsing any commercial paper belonging to complainant or to carry any bank accounts in any kind of nature in complainant's name. Complainant does not require the independent sales agents to provide any services to the customers and no written reports are required other than a record of calls and sales." (Appendix A)

The allegations of the amended bill establish that petitioner's activities in Alabama are more interstate in nature than those found by the Mississippi court to constitute interstate and not intrastate business activities. The Mississippi decision is in full accordance with the law of Alabama and of the United States generally.

The Alabama Constitution requires a foreign corporation doing business in Alabama to qualify. Section 232, *Constitution of Alabama.* This applies only to the doing of intrastate business and does not apply to the doing of interstate business. *Simonetti Brothers Produce Co.* v. *Peter Fox Brewing Co.,* 240 Ala. 91, 197 So. 38. There the Court stated:

> "Of course it must be conceded that a foreign corporation which has not complied with the requirements of Section 232 of the Constitution and of Sections 7208 and 7220 of the Code is prohibited from doing business in this state, that means from engaging in intrastate, as distinguished from interstate, business. Of course, it is not within the power of the state to prohibit foreign corporations from doing an interstate business. That power rests solely with the Congress." (240 Ala. at 94).

The rules as to business activity requiring a foreign corporation to submit to state licensing because it is engaged in intrastate business are stated in the case of *Memphis Steam Laundry Cleaner, Inc.* v. *Stone,* 342 U.S. 389, 96 L.Ed. 436, 72 S.Ct. 424. Plaintiff, a laundry located in Memphis, Tennessee, solicited business, picked up and delivered clothes and collected money in Mississippi. Mississippi sought to require plaintiff to pay a state license fee and to qualify to do business in the state. The Supreme Court reversed

a decision of the Mississippi Supreme Court requiring qualification. The Supreme Court stated:

> "In the long line of 'drummer' cases, beginning with Robbins v. Shelby County Taxing Dist. 120 US 489, 30 L.ed. 694, 7 S.Ct. 592 (1887), this Court had held that a tax imposed upon the solicitation of interstate business is a tax upon interstate commerce itself. Whether or not solicitation of interstate business may be regarded as a local incident of interstate commerce, the Court has not permitted state taxation to carve out this incident from the integral economic process of interstate commerce. As the Court noted last term in a case involving door-to-door solicitation of interstate business, 'Interstate commerce itself knocks on the local door.'" (342 U.S. at 392-393).

In *Robbins* v. *Taxing District of Shelby County,* 120 U.S. 489, 30 L.Ed. 694, 7 S.Ct. 592, plaintiff was soliciting sales, closing sales and delivering goods in Tennessee. He was employed by an Ohio firm, and both he and the firm had failed to qualify or to pay a permit fee required by Tennessee statute. He was convicted of a misdemeanor and appealed his conviction on the ground that the Tennessee statute as applied to him violated the commerce clause of the United States Constitution as he was engaged solely in interstate commerce. The Supreme Court reversed:

> "The negotiation of sales of goods which are in another state for the purpose of introducing them into the State in which the negotiation is made, is interstate commerce." 120 U.S. at 497)

In *International Text-Book Co.* v. *Pigg,* 217 U.S. 91, 54 L.Ed. 478, 30 S.Ct. 481, plaintiff was a Pennsylvania corporation operating correspondence schools. The company employed local agents in many states,

including Kansas, whose job it was to secure contracts with local residents for the correspondence courses, to collect payments due the schools and to keep in contact with students in their locality. The company shipped school materials directly to the student. The opinion of the Court states the facts of the case.

> "During the period covered by the present transaction, the company had a solicitor-collector for the territory that included Topeka, Kansas, and he solicited students to take correspondence courses in the plaintiff's schools. His office in Kansas was procured and maintained at his own expense, for the purpose of furthering the procuring of applications for scholarships and the collection of fees therefor. The company had no office of its own in that state. The solicitor-collector was paid a fixed salary by the company and a commission on the number of applications obtained and the collections made. He sent daily reports to the company for his territory, those reports showing that for March, 1906, the aggregate collections on scholarships and deferred payments on subscriptions approached $500.
>
> At the date of the agreement sued on, and at the time this suit was brought, numerous persons in Topeka were taking the plaintiff's course of instruction by correspondence through the mails. The contracts for those courses were procured by its solicitor-collector assigned to duty in Kansas, and, as stated, payments thereon were collected and remitted by him to the plaintiff at Scranton.
>
> The written contract in question, signed by the defendant at Topeka, Kansas, and accepted by the company at Scranton, showed that he had subscribed for a scholarship covering a course of instruction by correspondence in commercial law, and had agreed to pay therefor $84, in install-

ments. When this suit was brought, there remained unpaid on the principal of that subscription the sum of $79.60.

The present action was brought to recover that sum, with interest, as due the company under the defendant's contract with it." 217 U.S. at 100-101)

The defendant sought to dismiss on the ground the Kansas statute required foreign corporations to qualify with the state before doing business in the state and provided that a foreign corporation failing to comply with this statute could not bring any action in the courts of that state. The plaintiff had not so qualified, and the action was dismissed and affirmed by the Supreme Court of Kansas.

This Court reversed, holding the statute as applied to the plaintiff was unconstitutional as the plaintiff was engaged in interstate commerce and not intrastate commerce in Kansas. This Court specifically held that the solicitation of orders by the resident agent of the plaintiff under the facts set out above constituted interstate commerce activity.

The activities alleged in the amended bill to be the method of business operation by petitioner in Alabama do not constitute "doing business" within the state so as to subject petitioner to the Alabama statute requiring it to qualify through a given procedure to do business in the state, since such activities and transactions are in interstate commerce and not subject to state regulation. A summary of these activities and the cases holding these activities are interstate in nature follow below:

I. The soliciting of orders for goods within a state by the agent of a foreign corporation and the shipment of such goods to the purchaser.

Sonneborn Brothers v. *Keeling,* 262 U.S. 506, 67 L. Ed. 1095, 43 S.Ct. 643.

State v. *Agee,* 83 Ala. 110, 3 So. 856.

Simonetti Brothers Produce Co. v. *Peter Fox Brewing Co.,* 240 Ala. 91, 197 So. 38.

Swisegood v. *Century Factors, Inc.,* 280 Ala. 37, 189 So. 2d 776.

Mergenthaler Linotype Co. v. *Gore,* 118 Fla. 889, 160 So. 481.

Stevens-Davis Co. v. *Stock,* 141 Fla. 714, 193 So. 745.

II. The solicitation of orders for goods within a state by a foreign corporation through a resident agent who maintains a local office at his own expense.

Stockard v. *Morgan,* 185 U.S. 27, 46 L.Ed. 785, 22 S.Ct. 576.

Stratford v. *Montgomery,* 110 Ala. 619, 20 So. 127.

Crump v. *McCord,* 154 Ga. 147, 113 S.E. 534.

Holloway Material & Supply Co. v. *Perfection Oak Flooring Co.,* 191 Okla. 350, 130 P.2d 296.

Caldwell v. *North Carolina,* 187 U.S. 622, 47 L.Ed. 336, 23 S.Ct. 229.

Davis v. *Virginia,* 236 U.S. 697, 59 L.Ed. 795, 35 S.Ct. 479.

Lee v. *La Fayette,* 153 Ala. 675, 45 So. 294.

Crum v. *Prattville,* 155 Ala. 154, 46 So. 750.

If these activities and transactions are interstate in nature, surely the promotion of them by training and assisting the sales agents would not render them intrastate in nature.

The status of petitioner's business in Alabama is governed solely by the pleadings because no evidence has been taken in the case. The activities alleged in the bill fall within the rules set out in all of the foregoing cases. Clearly, these allegations show the petitioner to be engaged in interstate commerce and not subject to the rules of Alabama requiring foreign corporations to qualify before transacting business in Alabama or be denied access to the Alabama courts to enforce contracts.

The second question to be considered is the ruling of the Alabama Supreme Court that the contract sought to be enforced is void under Alabama law, and, therefore, unenforceable by petitioner in the courts of Alabama.

The bill of complaint alleges that the amended contracts sought to be enforced were executed in Ohio and were to be interpreted by Ohio law. The amended bill further alleges that these contracts had been enforced by the United States District Court for Southern Mississippi in the *Sides* case, *supra.* Under these allegations the Alabama courts were bound to enforce these contracts, whether void under the public policy of Alabama or not. The Alabama Supreme Court declared the contracts void and refused to accept the holding of the District Court.

This is clearly a violation of the full faith and credit clause of the United States Constitution as expressed in Article IV, Section 1. While the Supreme Court of Alabama did not state that it was disregarding the decision of the United States District Court of Southern Mississippi, it is clear from the opinion that it did because that decision and its effect

was pleaded in the amended bill, and the decision of the Alabama Supreme Court reached the exact opposite conclusion.

In *Chambers* v. *Baltimore and Ohio Railway Company,* 207 U.S. 142, 52 L.Ed. 143, 28 S.Ct. 34, this Court held that where it appears from the opinion of the state supreme court that a federal question was assumed to be in issue, was decided against the federal claim and the decision was essential to the opinion, this is sufficient to give this Court the right to review the decision. The question of the effect of the Mississippi opinion on the contracts before the Court and its entitlement to full faith and credit was squarely presented to the Supreme Court of Alabama by the pleadings and the briefs and decided against the claim of federal right.

It is well settled that the proceedings of federal district courts must be accorded the same full faith and credit as would be required with respect to the judicial proceedings of another state. *Knights of Pythias* v. *Meyer,* 265 U.S. 30, 68 L.Ed. 885, 44 S.Ct. 432; *Hancock National Bank* v. *Farnum,* 176 U.S. 640, 44 L.Ed. 619, 20 S.Ct. 506.

Nor is there any question that this Court has the power to review the refusal of a state court to give full faith and credit to a judgment of a federal court. *Knights of Pythias* v. *Meyer, supra.*

There can be no question but that the opinion of the Alabama Supreme Court refused to give full faith and credit to the opinion of the United States District Court of Southern Mississippi as the Alabama court reached the exact opposite conclusion from the District Court on the very same questions as were before both

courts under the very same circumstances. The judgment of the United States District Court for Southern Mississippi is a final determination between the parties to the contract as to the validity of the very contract which the Alabama Supreme Court declared to be invalid in this action. It would be a manifest absurdity to hold that the Alabama court had not denied full faith and credit to the Mississippi decision if the Alabama court allowed a successful collateral attack on that opinion.

The Alabama cases are clear in holding that third parties may not collaterally attack judgments of the Alabama courts to which they were not parties except on the grounds of lack of jurisdiction, fraud or collusion among the parties to the cause. *Cobbs* v. *Norville,* 227 Ala. 621, 151 So. 576 and *Laney* v. *Dean,* 267 Ala. 129, 100 So.2d 688, among many others. No such basis has been brought forward by respondents as a ground for collaterally attacking the judgment of the Mississippi District Court.

There is no question but that the effort by respondents in this cause constitutes a collateral attack on the judgment of the Mississippi District Court. The Alabama cases hold that any attempt to defeat a judgment other than by direct appeal or a direct proceeding in the same court is a collateral attack. *Johnson* v. *Johnson,* 182 Ala. 376, 62 So. 706 and *Penton* v. *Brown-Crummer Investment Company,* 222 Ala. 155, 131 So. 14.

The Alabama Supreme Court held in *Williams* v. *Overcast,* 224 Ala. 119, 155 So. 543, that a direct attack on a judgment was a proceeding instituted specifically for the purpose of attacking that judgment in some manner, while a collateral attack was a proceeding not instituted specifically for that purpose.

Thus, the opinion of the Alabama Supreme Court is the affirmance of a collateral attack on the judgment of the Mississippi District Court. Such an attack would not have been allowed on a judgment of the Alabama courts and is, therefore, a violation of the full faith and credit clause of the United States Constitution. As stated by this Court in *Morris* v. *Jones,* 329 U.S. 545, 91 L. Ed. 488, 67 S.Ct. 451, the principle of full faith and credit means simply that a final judgment shall be as final in all other courts as it would be in the court in which it was rendered. Clearly, the Alabama Supreme Court has violated this rule and must be reversed.

As to the other contracts declared invalid in this cause, there was no direct judicial decision determining their validity. This Court has, however, held in *Sovereign Camp, W.O.W.* v. *Bolin,* 305 U.S. 66, 83 L. Ed. 45, 59 S.Ct. 35, that a decision of the Nebraska Supreme Court holding a particular type of insurance certificate invalid was entitled to full faith and credit by the Missouri Supreme Court in an action involving a similar type of insurance certificate brought by a Missouri beneficiary of a Missouri member of the same mutual insurance association. The contracts involved in the instant case are identical.

Finally, Alabama has no interest whatsoever in the contracts concerned as these are contracts made in another state and to be performed in another state. This Court has held in *Home Insurance Company* v. *Dick,* 281 U.S. 397, 74 L. Ed. 926, 50 S. Ct. 338, that in these circumstances a state court is not justified in declaring such a contract void as against its public policy. To the same effect is *Morris* v. *Jones, supra.*

CONCLUSION

This is a case in which the Alabama Supreme Court has denied access to the courts of Alabama to a foreign corporation under the provisions of a punitive statute. States undoubtedly want all foreign corporations engaged in any business activities within their borders to be qualified in and taxed by the state. This is the true public policy the Alabama Supreme Court seeks to enforce by this opinion.

Such public policy of any state must, however, yield to the necessity for allowing interstate commerce to flow unimpeded by varying local regulations and decisions. In order to enforce the public policy of Alabama, the Supreme Court of that state has entered an opinion that ignores the necessary distinction between interstate and intrastate commerce and which refused to recognize the full faith and credit clause of the United States Constitution. Such an opinion must not be allowed to stand.

One final point. Petitioner is a corporation engaged in distributing products in interstate commerce throughout the United States. It, like all such corporations has competitors. Petitioner, under these circumstances, must be allowed access to the courts of the several states of the United States in order to protect legitimate business interests from irreparable harm. In this case, for example, a competitor of petitioner's has entered into a conspiracy with an individual Alabama resident to injure legitimate business interests of petitioner. The only court in the world in which petitioner may bring these conspirators together is the Circuit Court of Jefferson County, Alabama. To deny petitioner the right to protect its legitimate interests, which would be extended to any other citizen of this

country, is to deny petitioner due process of law and equal protection of the law. Such a result cannot be tolerated.

Respectfully submitted,

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Certificate of Service

I, W. Eugene Rutledge, counsel for petitioner and a member of the Bar of the Supreme Court of the United States, certify that I have served a copy of the foregoing Petition for a Writ of Certiorari on Messrs. Cabaniss, Johnston, Gardner, Dumas & O'Neal, 1900 First National-Southern Natural Building, Birmingham, Alabama 35203 and Messrs. Bainbridge & Mims, 1010 Massey Building, Birmingham, Alabama 35203, attorneys for respondents, by depositing the same in a United States post office, with first class postage prepaid, addressed to them at the above address, the 18th day of September, 1974.

Of Counsel for Petitioner